

NOT DESIGNATED FOR PUBLICATION  
ARKANSAS COURT OF APPEALS  
DAVID M. GLOVER, JUDGE

DIVISION IV

CACR07-704

January 16, 2008

APPEAL FROM THE CRITTENDEN  
COUNTY CIRCUIT COURT,  
FIFTH DIVISION [CR-06-204]

TYRONE E. JENKINS

APPELLANT

HONORABLE RALPH WILSON, JR.,  
CIRCUIT JUDGE

V.

STATE OF ARKANSAS

APPELLEE

AFFIRMED; MOTION TO BE  
RELIEVED IS GRANTED

Appellant, Tyrone E. Jenkins, pled guilty on July 3, 2006, to the underlying offense of possession of a controlled substance. He was placed on supervised probation for eight years. On December 5, 2006, the State filed its petition to revoke appellant's probation. The revocation hearing was held on March 27, 2007, following which the trial court revoked appellant's probation and sentenced him to five years in the Arkansas Department of Correction. We affirm.

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(j) of the Rules of the Arkansas Supreme Court and Court of Appeals, appellant's attorney has filed a motion to withdraw as counsel on the ground that this appeal is wholly without merit. This type of

motion must be accompanied by an abstract and brief referring to everything in the record that might arguably support an appeal, including all motions, objections, and requests decided adversely to appellant, and a statement of reasons why none of those rulings would be a meritorious ground for reversal. Appellant was provided with a copy of his counsel's brief and was notified of his right to file a list of points on appeal within thirty days, but he has not done so.

Here, no objections were raised during the probation hearing. Accordingly, the only adverse ruling for us to consider is the decision to revoke appellant's probation. The ultimate decision to revoke probation is an adverse ruling that must be addressed by counsel seeking to withdraw from representation.

#### *Sufficiency of the Evidence to Support Revocation*

In testing the sufficiency of the evidence to support a revocation, we do not reverse the trial court's decision unless its findings are clearly against the preponderance of the evidence. *Bedford v. State*, 96 Ark. App. 38, 237 S.W.3d 516 (2006). In making our review, we defer to the superior position of the trial court to determine questions of credibility and the weight to be given to the evidence. *Id.* Evidence that is insufficient for a criminal conviction may be sufficient for a probation revocation. *Id.* The State only has to show that appellant committed one violation of the conditions of his probation in order to support a revocation. *Id.*

Here, the trial court determined that appellant violated the terms and conditions of his probation by failing to pay the ordered fines and court costs; by inexcusably failing to report

to his probation officer; by remaining outside the State without permission; and by failing to pay probation fees. As previously discussed, the State only needs to show the violation of one condition in order to support a revocation. We find no clear error in any of the trial court's findings regarding violations.

The collector of fines and costs for the Crittenden County Sheriff's Office testified that appellant had not paid any amounts on his fine. Appellant's probation officer testified that appellant did not report to his office as instructed, despite being given several extensions; that he traveled to Illinois, despite being instructed not to do so; and that he had failed to pay any of his probation fees. Appellant did not deny being in Chicago. He testified that he moved to Chicago when the friend he was living with in Nashville, Tennessee, with the permission of his probation officer, "got kicked out of his place." He explained that he got put in jail in Chicago on misdemeanor charges of DUI and driving without a license, which arose before he was placed on probation in Crittenden County; and that he was transported directly from jail in Chicago to Crittenden County. He also stated that on August 21, 2006, he told his probation officer that he "could send money for [his] fees and paperwork but [he] could not come down because [he] did not have enough money."

He also stated that he had "money on my books and \$300 with the bondsman ... to use for fees today." On cross-examination, he stated that he had \$50 to send to his probation officer but that the probation officer denied it.

In summary, evidence that is insufficient for a criminal conviction may be sufficient for the revocation of probation or suspended sentence, and because the determination of a

preponderance of the evidence turns on questions of credibility and the weight to be given testimony, we defer to the trial judge's superior position to resolve those matters. From our review of the record and the brief presented to us, we find compliance with Rule 4-3(j) and that the appeal is without merit. Accordingly, counsel's motion to withdraw is granted, and the order of revocation is affirmed.

Affirmed; motion to be relieved is granted.

BIRD and VAUGHT, JJ., agree.